

## § 369.8

## 49 CFR Ch. III (10–1–10 Edition)

### § 369.8 Requests for exemptions from filing.

(a) *In General.* This section governs requests for exemptions from filing of reports required under § 369.1.

(b) *Criteria.* The Federal Motor Carrier Safety Administration (FMCSA) may grant a request upon a proper showing that the exemption is necessary to preserve confidential business information that is not otherwise publicly available. Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to cause substantial harm to the carrier's competitive position; or

(2) Disclosure of information in the report would be likely to impair protectable government interests.

(c) *Contents of a request.* The contents of a request for an exemption from filing must contain, at a minimum, the contents that are required for a request for an exemption from public release contained in § 369.9(c). A carrier's request may include any other grounds as to why the request should be granted.

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 369.9(d). The table below summarizes report and request due dates.

| Report                        | Report due by    | Request due by |
|-------------------------------|------------------|----------------|
| Annual Form M .....           | March 31 .....   | March 31       |
| First Quarter Form QFR .....  | April 30 .....   | March 31       |
| Second Quarter Form QFR ..... | July 31 .....    | March 31       |
| Third Quarter Form QFR .....  | October 31 ..... | March 31       |
| Fourth Quarter Form QFR ..... | January 31 ..... | March 31       |

(e) *Decision to grant or deny a request.*

(1) A request will be denied if it fails to provide all of the supporting information required in paragraph (c) of this section or if the supporting information is insufficient to establish that information in the carrier's report meets the criteria in paragraph (b) of this section.

(2) FMCSA will grant or deny each request within a reasonable period of time. FMCSA will notify the carrier of its decision. The decision by FMCSA shall be administratively final.

(f) *Pendency.* While a request is pending, the carrier is required to submit any reports required under § 369.1.

(g) *Period of exemptions.* If a request for an exemption under this section is granted, the carrier will be exempt from the reporting requirements of § 369.1 for a period of three reporting years.

(h) *Modification of a decision to grant a request.* If a request is granted it remains in effect in accordance with its terms, unless modified by a later finding that the decision was clearly erroneous. If FMCSA believes such a finding should be made, FMCSA will notify the requesting carrier in writing of the

reasons for the modification. The carrier may seek reconsideration of the modification.

[64 FR 13922, Mar. 23, 1999. Redesignated at 71 FR 45742, Aug. 10, 2006, and amended at 71 FR 45743, Aug. 10, 2006]

### § 369.9 Requests for exemptions from public release.

(a) *In General.* This section governs requests for exemptions from public release of reports filed under § 369.1.

(b) *Criteria.* The Federal Motor Carrier Safety Administration (FMCSA) will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to